



August 7, 2000

Ms. Julie Joe
Assistant Attorney General
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711

OR2000-2974

Dear Ms. Joe:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 138553.

The Office of the Attorney General (the "OAG") received a request for "Any and all documents and records supporting expenses by the five tobacco trial lawyers, Umphrey, O'Quinn, Williams, Reaud, Nix and or their firms, hereafter defined as the "Trial Lawyers," in the Texas Tobacco Litigation" You claim that portions of the requested information are excepted from disclosure under sections 552.101 and 552.107(2) of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

The first item of the request seeks disclosure of information contained in seventeen boxes which you indicate were received by the OAG from private counsel representing the tobacco litigants. You assert that the information is protected from disclosure by section 552.107(2) of the Government Code. Section 552.107(2) excepts from required public disclosure information if "a court by order has prohibited disclosure of the information." You have provided to this office an order entered by the United States District Court for the Eastern District of Texas, Texarkana Division, in *In re State of Texas*, Cause No. 5:00-CV-188. The order, dated June 23, 2000, provides that the "17 boxes of documents turned over to the State by Private counsel SHALL REMAIN UNDER SEAL pending further order of this Court." You urge that you are prohibited by court order from disclosing the information in the seventeen boxes. To the extent this order applies to the requested items held by the OAG, section 552.107(2) provides an exception from required disclosure. Since section 552.107(2)

is dispositive of the information at issue, we do not address your claim under section 552.101 of the Government Code.¹

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

¹The request seeks not only the information contained in the seventeen boxes submitted to the OAG, but also five other categories of information. Since you have submitted no arguments which would support withholding from disclosure the requested information that is not located in the seventeen boxes, we assume that the OAG has released the remaining categories of requested information to the requestor. See Gov't Code §§ 552.006, .301, .302. Since this ruling requires the OAG to withhold all information in the seventeen boxes, you must not release any records in those boxes, including any item that might otherwise be responsive to the remaining categories of requested information.

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Carla Gay Dickson".

Carla Gay Dickson
Assistant Attorney General
Open Records Division

CGD/ljp

Ref: ID# 138553

Encl. Submitted documents

cc: Mr. Jim Brickman
President
Metroplex Citizens Against Lawsuit Abuse
P.O. Box 7600
Dallas, Texas 75209
(w/o enclosures)